

SUPPORT AGREEMENT

This Support Agreement ("this Agreement") is made and entered into this 27th day of May, 1999, by and between PROVAL CORPORATION (hereinafter "Support Vendor") an Ohio Corporation, with principal offices at 37 East High Street, Springfield, Ohio 45502, and LAWRENCE COUNTY, INDIANA (hereinafter "Customer"), with principal offices at 22 Courthouse, Bedford, Indiana 47421:

WITNESSETH;

WHEREAS, PROVAL CORPORATION, ("Support Vendor") and Customer entered into that certain Computer Program End-User Agreement dated May 27, 1999 (the "License Agreement") under which Customer obtained a non-exclusive, non-transferable license to use certain computer programs in object code form and related user documentation (the "Licensed Program") on certain terms and conditions;

WHEREAS, Support Vendor desires to offer Customer certain services with respect to the Licensed Program on the terms and conditions set forth herein, which meets the standards prescribed in 50 IAC 12;

NOW, THEREFORE, in consideration of the promises hereof, and the mutual obligations herein, the parties hereto, intending to be legally bound, hereby agree as follows:

**Section 1
DEFINITIONS**

For the purposes of this Agreement, the following definitions shall apply to the respective capitalized terms.

- 1.1. **"Defect."** Any failure of the Licensed Program to conform in all material respects to the provisions of 50 IAC 12. However, any non-conformity resulting from Customer's misuse, improper use, alteration, or damage of the Licensed Program, or Customer's combining or merging the Licensed Program with any hardware or software not supplied or identified as compatible by Licensor or Support Vendor, shall not be considered an Defect.
- 1.2. **"Enhancement."** Any modification or addition that, when made or added to the Licensed Program, materially changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Enhancements may be designated by Support Vendor as minor or major, depending on Support Vendor's assessment of their value and of the function added to the pre-existing Licensed program.
- 1.3. **"Error."** Any failure of the Licensed Program to conform in all material respects to its functional specifications as published from time to time by Licensor. However, any non-conformity resulting from Customer's misuse, improper use, alteration, or damage of the Licensed Program, or Customer's combining or merging the Licensed Program with any hardware or software not supplied or identified as compatible by Licensor or Support Vendor, shall not be considered an Error.
- 1.4. **"Error Correction."** Either a modification or an addition that, when made or added to the Licensed Program, establishes material conformity of the Licensed Program to the functional specifications, or a procedure or routine that, when observed in the regular operation of the Licensed Program, eliminates the practical adverse effect on Customer of such non-conformity.
- 1.5. **"Licensed Program."** The computer programs described in the End-User Agreement including any extracts from such programs, derivative works of such programs, or collective works including such programs (such as subsequent Releases) to the extent offered to Customer under this Agreement or the License Agreement.
- 1.6. **"Normal Working Hours."** The hours between 8 a.m. and 5 p.m. (Ohio time) on the days Monday through Friday, excluding regularly scheduled holidays of Support Vendor.
- 1.7. **"Releases."** New versions of the Licensed Program, which may include both Error Corrections and Enhancements.
- 1.8. **"Term."** An initial period commencing on the execution date of this agreement and ending on the date specified in Exhibit A hereto. Thereafter, the Term shall automatically renew for successive periods of one (1) year each unless and until terminated pursuant to Section 6 hereof. In no event, however, shall the Term extend beyond the prescribed term of the License Agreement.

Section 2
SCOPE OF SERVICES

2. During the Agreement term, Support Vendor shall render the following services in support of the Licensed Program, during Normal Working Hours, subject to the compensation fixed for each type of service in Support Vendor's rate schedule set forth in Exhibit A.
 - 2.1. Support Vendor shall maintain a toll free telephone support line that allows Customer to report system problems and to seek assistance in use of the Licensed Program.
 - 2.2. Support Vendor shall provide problem diagnostic support by any necessary combination with remote and on-site services based upon the rate schedule set forth in Exhibit A attached hereto.
 - 2.3. Support Vendor shall maintain a trained staff capable of rendering the services set forth in this Agreement.
 - 2.4. Support Vendor shall be responsible, at Support Vendor's expense, for using all reasonable diligence to correct verifiable and reproducible Errors or Defects when reported to Support Vendor in accordance with Support Vendor's standard reporting procedures. Support Vendor shall, within 24 business hours of verifying that such an Error or Defect is present, initiate work in a diligent manner toward development of an Error or Defect Correction. Following completion of an Error or Defect Correction, Support Vendor shall provide the Error or Defect Correction through a "temporary fix" consisting of sufficient programming and operating instructions to implement the Error or Defect Correction. Support Vendor shall include the Error or Defect Correction in all subsequent Releases of the Licensed Program. Support Vendor shall not be responsible for correcting Errors or Defects in any version of the Licensed Program other than the most recent Release of the Licensed Program, provided that Support Vendor shall continue to support prior Releases superseded by recent Releases for a reasonable period sufficient to allow Customer to implement the newest Release, not to exceed 60 days.
 - 2.5. Support Vendor issues new Releases of the Licensed Program from time to time to its contracted support customers, containing Error Corrections, minor Enhancements, and, in certain instances if Support Vendor so elects, major Enhancements. All such Releases shall be supplied to Customer under this Support Agreement without additional charge.
 - 2.6. Support Vendor may, from time to time, offer optional major Enhancements to its customers generally for an additional charge. Such optional major Enhancements shall only be additional features not required for continued operation of the most recent Release of the Licensed Program by Customer.
 - 2.7. Subject to space availability, Customer may enroll its employees in Support Vendor's training classes, held at locations established by Support Vendor, for regular or advanced training.
 - 2.8. Support Vendor shall consider and evaluate the development of Enhancements for the specific use of Customer and shall respond to Customer's requests for additional services pertaining to the Licensed Program (including, without limitation, data conversion and report-formatting assistance), provided that such assistance, if agreed to be provided, shall be subject to supplemental charges mutually agreed to by Support Vendor and Customer.
 - 2.9. Support Vendor may from time to time provide other special services to Customer as outlined in Exhibit B.
 - 2.10. Support Vendor will make or assist Customer with any product or service charges that may be required as a consequence of a change in any law, rule, or Indiana State Board of Commissioners policy regarding or relating to the Licensed Program. The parties agree that such changes shall be made by the Support Vendor within a reasonable period after the Support Vendor has been notified by the Customer in writing of the necessity of such changes, or within the time period prescribed by law. Support Vendor will be equitably compensated by the Customer, based upon Support Vendor's then current, and reasonable, rates for services performed, including reimbursement of reasonable expenses, in order to make the necessary changes.

Section 3
3. FEES AND CHARGES

- 3.1. Customer shall pay Support Vendor its fees and charges based on the rate schedule set forth in Exhibit A attached hereto.
- 3.2. Customer shall reimburse Support Vendor for travel expenses (i.e., transportation, lodging and meals) incurred by Support Vendor in rendering services to Customer at Customer's site. These expenses are included in and are part of Support Vendor's daily on-site fees slated in Exhibit A.
- 3.3. Support Vendor shall invoice Customer at the beginning of each calendar month for that month's support fee and for all other fees and charges accrued during the previous month. Customer shall pay the invoiced amount promptly in its normal payment cycle.
- 3.4. Customer shall be responsible for procuring, installing and maintaining all equipment, telephone lines, communications, interfaces, and other hardware (other than the hardware constituting the program control center maintained at Support Vendor's facilities) necessary to operate the Licensed Program and to obtain from Support Vendor the services called for by this Agreement.

Section 4
4. REIMBURSEMENT/RELEASE OF SOURCE CODE

- 4.1. In the event that Support Vendor fails to support the Licensed Program as described in the Support Agreement, Customer shall notify Support Vendor of such failure in writing. If such failure has not been cured by Support Vendor within thirty (30) days, or such failure is incapable of cure, Support Vendor agrees to reimburse Customer for all reasonable costs incurred by Customer as a result of Support Vendor's failure to support the Licensed Program during the term of the Support Agreement.
- 4.2. In the event that the Indiana State Board of Tax Commissioners, an arbitrator, or a court of competent jurisdiction within the State of Indiana rules or determines that Support Vendor has ceased to provide continued support of the Licensed Program during the term of the Support Agreement and that the Support Vendor is incapable of resuming such support, then, in accordance with the Source Code Escrow Agreement between the parties hereto Support Vendor's documentation and source code for the Licensed Program shall be released by the escrow agent to Customer.

Section 5
5. PROPRIETARY RIGHTS

- 5.1. To the extent that Support Vendor may provide Customer with any Error Corrections or Enhancements or any other program, including any new programs or components, or any compilations or derivative works prepared by Support Vendor (collectively, "Vendor Programs"), Customer may (1) install one set of the Vendor Programs, in the most current form provided by Support Vendor, in Customer's own facility; (2) use such Vendor Programs in connection with the Licensed Programs, and in a manner consistent with the requirements of the License Agreement, for purposes of serving Customer's internal needs; and (3) make one copy of the Vendor Programs in machine-readable form for non-productive backup purposes only. Customer may not use, copy or modify the Vendor Programs, or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by Support Vendor. Notwithstanding Section 6 hereof, Customer's rights under this Section 4.1 shall remain in effect for so long as Customer is authorized to use the Licensed Programs under the License Agreement. Upon termination of such License Agreement, Customer shall return or destroy the Vendor Programs, and returning the Vendor Programs in the manner required by the License Agreement shall be sufficient for such purpose.
- 5.2. The Licensed Programs, including any associated intellectual property rights, are and shall remain the sole property of Support Vendor, regardless of whether Customer, its employees, or contractors may have contributed to the conception of such work, joined in the effort of its development, or paid Support Vendor for the use of the work product. Customer shall from time to time take any further action and execute and deliver any further instrument, including documents of assignment or acknowledgment, that Support Vendor may reasonably request in order to establish and perfect its exclusive ownership rights in such works, including any associated intellectual property rights.

Section 6

6. DISCLAIMER OR WARRANTY; INSURANCE, INDEMNIFICATION; LIMITATION OF LIABILITY

- 6.1. **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SUPPORT VENDOR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES CONCERNING THE LICENSED PROGRAM OR THE SERVICES TO BE RENDERED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 6.2. In no event shall Support Vendor's cumulative liability for any claim arising in connection with this Agreement exceed the total fees and charges paid to Support Vendor by Customer under this Agreement within the last 3 months prior to any claim. In no event shall Support Vendor be liable for any indirect, consequential, special, exemplary, or incidental damages of whatever kind and however caused, even if Support Vendor knew or should have known of the possibility of such damages.
- 6.3. No action, whether based in contract, strict liability, or tort, including any action based on negligence, arising out of the performance of services under this Agreement, may be brought by either party more than one (1) year after such cause of action accrued, except that an action for non-payment may be brought within two years of the date of the last payment.
- 6.4. During the term of this Agreement, Support Vendor shall maintain a policy or policies of Workers Compensation insurance with such limits as may be required by law, and a policy or policies of general liability insurance having limits of not less than five-hundred thousand dollars (\$500,000.00) combined single limit per occurrence.
- 6.5. Support Vendor shall indemnify Customer and its officers from all liability, damage or loss, which arises out of or in connection with, or is claimed to arise out of or connection with, any of services performed by Support Vendor or any of its agents or employees under this Agreement, provided that such liability, damage or loss is attributable to physical injury to persons or property which is caused (or is claimed to have been caused) by Support Vendor or any of its agents or employees. Support Vendor's maximum liability under this Section 5.5 shall not exceed the applicable limits of its insurance policies which it is obligated to maintain pursuant to Section 5.4 of this Agreement and the limitation of liability of Section 5.2 shall not apply to this Section 5.5.

Section 7

7. TERMINATION

- 7.1. This Agreement may be terminated as follows:
- 7.1.1. This Agreement shall immediately terminate upon the termination of the License Agreement;
- 7.1.2. This Agreement may be terminated by either party upon the expiration of the then current term of this Agreement, provided that at least 90 days' prior written notice is given to the other party; or
- 7.1.3. This Agreement may be terminated by either party upon 30 days prior written notice if the other party has materially breached the provisions of this Agreement and has not cured such breach within such notice period.
- 7.1.4. This Agreement shall be considered void and termination shall occur if the Customer or county assessor fails to certify, recertify or confirm the Licensed Program, or the Licensed Program is decertified, or any such certification or confirmation is revoked.
- 7.2. Following termination of this Agreement, Support Vendor shall immediately invoice Customer for all accrued fees and charges and all reimbursable expenses, and Customer shall pay the invoiced amount immediately upon receipt of such invoice. Customer may continue to use any work supplied to Customer by Support Vendor for the remaining term of the License Agreement. Any amount not paid within 30 days after the invoice date shall bear interest at the lesser of one (1) percent per month or the highest rate allowed by applicable law.

Section 8
8. MISCELLANEOUS

- 8.1. Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. This Agreement may not be modified except by a written instrument duly executed by the parties hereto.
- 8.2. This Agreement and the parties' obligations hereunder shall be governed, construed, and enforced in accordance with the laws of the State of Indiana.
- 8.3. In the event that any provision of this Agreement is held invalid, illegal, or unenforceable, the remaining provisions shall be enforced to the maximum extent permitted by applicable law.
- 8.4. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.
- 8.5. The waiver by either party of any term or condition of this Agreement shall not be deemed to constitute a continuing waiver thereof nor of any further or additional right that such party may hold under this Agreement.
- 8.6. The Support Vendor, and its subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of race, color, religion, sex, sexual preference, handicap, national origin or age. Breach of this provision may be considered a material breach of this contract.
- 8.7. Support Vendor shall be an independent contractor and nothing in this Agreement shall be construed to create an agency relationship, partnership, or joint venture between Support Vendor and Customer, or make Support Vendor or Customer representatives of each other. Neither Support Vendor or Customer shall have any authority to bind the other to any agreement or obligation.

Section 9
9. DISPUTE RESOLUTIONS

- 9.1. The parties hereto stipulate and agree that all disputes concerning whether the Licensed Program meets the standards set forth in 50 IAC 12, shall be resolved by the Indiana State Board of Tax Commissioners, in accordance with the procedures contained in 50 IAC 12-14-1. Specifically, a party to a dispute shall file with the tax board a written petition for conflict resolution. Such petition shall contain the information prescribed in 50 IAC 12-14-1(b). Within fifteen (15) days of receipt of a copy of the petition, the opposing party must file with the tax board a response to each item specified in the complaint. The parties shall make available to the investigation their personnel, user documentation, technical documentation, and any other materials or information sources required by the tax board or its agent. The parties shall be entitled to representation at a hearing to be held by the tax board.
- 9.2. The parties hereto stipulate and agree that disputes concerning other contractual matters shall be resolved through binding arbitration under the procedures permitted under the Indiana Uniform Arbitration Act, IC § 34-57-2-1 et seq. Such arbitration shall be conducted by a single arbitrator appointed by the American Arbitration Association. Insofar as possible, such arbitrator shall be, at the time of his selection, a partner or manager of a national or regional accounting firm (including the information processing, management support, and merger and acquisitions operations or affiliates thereof) not regularly employed by the Support Vendor or Customer, and such arbitrator shall be required to have substantial experience in the field of computer software technology and licensing. The prevailing party in the arbitration proceedings shall be awarded reasonable attorneys' fees, expert witness costs and expenses, and all other costs and expenses incurred directly or indirectly in connection with the proceedings unless the arbitrator for good cause determines otherwise.

- 9.3. The parties hereto stipulate and agree that all other disputes not covered by the preceding provisions of this section shall be resolved under the laws of the State of Indiana. The parties acknowledge and agree that nothing in this Agreement, or in the standards set forth in 50 IAC 12, shall be construed as limiting the rights of the parties to pursue action in the courts of the State of Indiana after the above procedure, and the procedures set forth in 50 IAC 12, have been exhausted.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as set forth below.

PROVAL CORPORATION

By: J. Wayne Moore
J. Wayne Moore

Title: President

Date: May 27, 1999

LAWRENCE COUNTY, INDIANA

By: James Craig Chumley
(Authorized Official)

Title: President Lawrence County
Commissioners

Date: Feb 2, 1999

EXHIBIT A

PROVAL CORPORATION
ON SITE TRAINING/TECHNICAL ASSISTANCE
(Per Support Person)

On-site technical support visits (plus travel expenses), per day \$ 600

Custom programming \$100/hr
Work done at home office, not during site visit
(Programming done during an on site visit
is covered by the on site fee)

BASE SUPPORT AGREEMENT MONTHLY FEES

Software telephone support & updates for Nine (9) full workstations & One (1) inquiries/mo

Beginning ~~January 1, 2000~~ AT COMPLETION OF INITIAL TERM cc J.C.C.

Initial Term - ~~January 1, 1999 through December 31, 1999~~ FOR 12 MONTHS AFTER INSTALLATION cc J.C.C.

\$766/month

EXHIBIT B

SPECIAL SERVICES

General.

Support Vendor may offer and Customer may accept special services from time to time. Agreements for such services shall be described in writing as an addendum to this Agreement and properly executed by both Support Vendor and Customer.

Special Start-up Training.

Support Vendor shall provide up to _____ days of on site training for a total fee of \$600.00 per day including expenses. The actual days of training do not need to be scheduled back-to-back, but will be according to a mutually agreed upon schedule.

File Conversion.

Support Vendor shall provide file conversion services from reassessment flat files provided by Customer into the new database for no additional charge, provided such files meet ProVal® specifications.

ProVal Corporation will provide modifications to their software as needed to create flat files capable of being exported from the ProVal system to any other computer hardware and software system being used by Customer for purposes of property tax billing as a normal part of the annual maintenance fees paid to ProVal Corporation by Customer. Necessary modifications to the export portion of the ProVal software will be made in a timely fashion so as to allow property tax billing to be performed at times normally scheduled for that purpose by Customer.

First Year Conversion Support & Updates

Support Vendor shall install, support and provide maintenance updates for the ProVal(application software from the date of this Agreement through _____, 199__ for a flat fee of \$_____.

Exhibit C SUPPORT AGREEMENT ADDENDUM

This Support Agreement Addendum further clarifies Sections 1 and 2 of the Support Agreement and provides a more specific description of Support Vendor's included services with respect to minor and major Enhancements (paragraphs 2.5 and 2.6).

1. All new Releases of the Licensed Program containing error corrections, minor enhancements and most major enhancements, shall be provided to Customer at no additional charge beyond the monthly Support Agreement Fee. Minor and major enhancements of the following application areas are specifically included:
 - a. All aspects of the Real Estate assessment software including data entry, processing, cost approach pricing and printing Property Record Cards and Form 11's for all classes of property.
 - b. Market Approach valuation
 - c. Income Approach valuation
 - d. Personal Property
 - e. Mobile Homes
 - f. Appeals Tracking
 - g. Permit Tracking
 - h. Any changes mandated by the State Law or Regulation
2. Major enhancements which are subject to additional charges include the following application areas:
 - a. Capabilities not part of the existing system, which might be added later to benefit Assessors such as handling Dog Licenses.
 - b. Add-on packages such as the Report Writer which constitute an optional feature.
 - c. Major application areas not covered by paragraph 1 above.

EXHIBIT D
ProVal Corporation Holidays

New Year's Day

Memorial Day
(observed)

Independence Day

Day following Independence Day
if Independence Day falls on Thursday

Labor Day

Thanksgiving Day

Day after Thanksgiving

Christmas Eve
if week day

Christmas Day
(observed)